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Application No. 10/697,366
Amendment A

REMARKS

The claims have been amended in order to correct minor informalities and to address other issues raised by the Examiner. Claim 21 has been added. Claims 1, 2, 10, 12, 14, and 19 have been amended and claim 5 has been canceled. Claims 2 and 19 have been amended to address typographical errors and were not amended for reasons of patentability. Twenty (20) claims remain pending in the application: claims 1-4, and 6-21. Reconsideration of claims 1-4 and 6-20 in view of the amendments above and remarks below and consideration of new claim 21 is respectfully requested.

By way of this amendment, Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone the undersigned at (858) 552-1311 so that such issues may be resolved as expeditiously as possible.

Information Disclosure Statement

1. Applicant is submitting an Information Disclosure Statement along with authorization to charge fees according to 37 C.F.R. §1.97(c). Applicant respectfully requests that the Examiner consider the cited references.

Claim Rejections - 35 U.S.C. §102

2. Claims 1-20 stand rejected under 35 U.S.C. § 102 (e), as being anticipated by U.S. Patent No. 6,690,655 (Miner et al.).

Applicant has amended independent claims 1 and 10 to recite an out-of-band system comprising an out-of-band transceiver that is configured to both transmit and receive out-of-band communications. There is support for these

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amendments in the specification as filed in at least page 9, line 9 stating: "[t]he out-of-band system 144 further includes an out-of-band receiver and/or transceiver 162 and an out-of-band transmitter 164." Miner et al. fails to teach or suggest an out-of-band transceiver or an out-of-band transceiver that both receives and transmits out-of-band communication.

The Examiner suggests that Miner et al. anticipates an out-of-band channel transmission, however, Miner et al. only describes an out-of-band or secondary channel transmission in the direction from a first device to a second device (i.e., the secondary downstream channel 213 in Miner et al.). Miner et al. does not disclose the first device additionally receiving an out-of-band transmission from the second device (i.e. no secondary upstream channel is disclosed). In fact, Miner et al. specifically teaches away from this implementation as it requires the in-band system to be activated once the control information is received thereby only communicating upstream to the network over the primary channel. Therefore, claim 1 is not anticipated by Miner et al. because the claimed apparatus comprises at least a transceiver configured to both transmit and receive in the out-of-band frequency.

Additionally, Applicant further amended independent claim 10 to include that "the transceiver wirelessly transmits an out-of-band interrogation" (emphasis added). There is support for this element in the specification as filed in at least page 12 lines 27 – 29, where the out-of-band system, once it detects a power on frame, "performs an interrogation of the remote sending device...." As discussed above, Miner et al. does not teach or suggest an out-of-band transceiver or an out-of-band transceiver transmitting an out-of-band interrogation, and Miner et al. does not teach or suggest an out-of-band interrogation. Therefore, claim 10 is not anticipated or obvious over Miner et al.

Independent claim 14 has also been amended to incorporate "transmitting a wireless out-of-band communication in response to receiving the out-of-band

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"communication", which is not anticipated by Miner et al. There is support for this amendment in the specification as filed in at least page 8 line 4-5: "[t]he out-of-band system 144 additionally provides wireless communication to and/or from the station 140 (emphasis added)." Miner et al. fails to teach or suggest transmitting an out-of-band communication in response to receiving an out-of-band communication. Further as discussed above, Miner et al. specifically teaches away from sending a communication over the out-of-band or secondary channel in response to receiving a communication over the out-of-band channel by requiring that any communication transmitted from the RIU in response to an out-of-band communication be transmitted over the primary up-stream channel 215, where Miner et al. states "the RIU 209 transmit[s]...an acknowledgement message confirming receipt of the control information to the network control facility 205 over the [primary] upstream channel 215" (Miner et al. Col. 9, lines 62-64, emphasis added). Therefore, Miner et al. does not teach, and instead teaches away from transmitting an out-of-band communication in response to receiving an out-of-band communication.

The Examiner has further rejected claims 2-4 by equating the processor/router 303 in Miner et al. to the controller in claim 2 that recites: "wherein the out-of-band system includes a controller, such that a least a portion of the out-of-band wireless communication is directed to the controller." However, "a portion of the out-of-band communication" is not directed to the processor/router 303, as recited in claims 2-4, and the processor/router 303 of Miner et al. does not receives any of the out-of-band communication. Therefore, claims 2-4 are not anticipated by Miner et al.

Furthermore regarding claim 18, Miner et al. does not teach or suggest a method "wherein the verifying the target device is the intended target includes transmitting an out-of-band identification request; and receiving an out-of-band reply containing an identification" as recited in claim 18 as filed. In fact, Miner et al.

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specifically teaches away from an "out-of-band reply" by requiring the only communication in response to an out-of-band communication be over the primary upstream channel. Therefore, claim 18 is neither anticipated nor obvious in view of Miner et al. and Applicant respectfully requests the rejection be withdrawn.

New Claims

3. Newly submitted claim 21 is believed to be allowable because it is directed to that which is not shown or suggested in the applied prior art.

Support for new claim 21 can be found at least at page 14, lines 6-17 of the application as filed, reciting: "[i]n some embodiments, power consumption is further reduced by transitioning the out-of-band system 144 between a sleep mode and an active mode."

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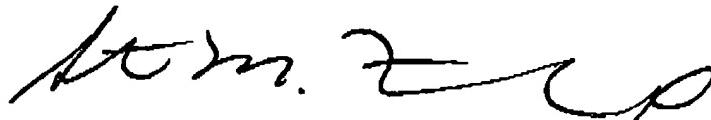
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CONCLUSION

Applicant submits that the above amendments and remarks place the pending claims in a condition for allowance. Therefore, a Notice of Allowance is respectfully requested.

Respectfully submitted,



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